

REMARKS

Claims 1-29 are pending in the Application. Claims 1 and 11 stand provisionally rejected by the Office Action mailed on July 22, 2009. No claims are amended by the present response. Claims 1 and 11 are independent claims. Claims 2-10 and 24-26, and 12-23 and 27-29 depend from independent claims 1 and 11, respectively.

Applicant respectfully requests reconsideration of the pending claims 1-29, in light of the following remarks.

Rejections of Claims

The Office Action states that “[c]laims 1 and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 23, 36 of copending Application No. 11637435 (hereinafter ‘435), in view of Thurston US 20030217358 A1.” (Office Action at p. 3.) The Office Action recognizes that the conflicting claims are not identical. (*See id.*) However, the Office Action asserts they are not patentably distinct because “‘435 claim 23 also recites a firmware, memory, in a electronic device and updating software and firmware. And Thurston disclose the Metadata portion associated with the Firmware not explicitly taught in ‘435.” (*See id.*)

While Applicant does not agree with the Office Action’s rejection (for example, Applicant respectfully submits that claim 1 does not merely recite “firmware,” “updating,” and “metadata,” but recites further limitations relating to, for example, the “firmware component” and “metadata” as fully set forth in claim 1), Applicant nevertheless submits herewith a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c), disclaiming the terminal part of this application that may extend beyond the expiration date of commonly owned Application No. 11/637,435, to obviate the double patenting rejection. Applicant respectfully submits that the obviousness-type double patenting rejection is overcome.

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Conclusion

In general, the Office Action makes various statements regarding the claims and the cited references that are now moot in light of the above. Thus, Applicant will not address such statements at the present time. However, Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicant believes that all of pending claims 1-29 are allowable. Should the Examiner disagree or have any questions regarding this submission, Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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